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# Maine Labor Relations Board Annual Report, Fiscal Year 2012

Maine Labor Relations Board

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# ANNUAL REPORT

## MAINE LABOR RELATIONS BOARD

Fiscal Year 2012

This report is submitted pursuant to 26 M.R.S.A. §§ 968(7) and 979-J(1) (2007).

### Introduction

The mission of the Maine Labor Relations Board and its affiliated organizations, the Panel of Mediators and the State Board of Arbitration and Conciliation, is to foster and improve the relationship between public employees and their employers. The Maine Labor Relations Board (“Board”) protects the rights and enforces the responsibilities established by the four separate labor relations statutes covering Maine’s public sector employees. The Board does this by creating bargaining units, conducting secret ballot elections to certify, change or decertify bargaining agents, and processing prohibited practice complaints. The Panel of Mediators and the State Board of Arbitration and Conciliation provide dispute resolution procedures to assist parties in negotiating initial or successor collective bargaining agreements and in resolving contract grievance issues. The focus of this report is the activity of the Labor Board during the fiscal year.

The Board had requests for services from most segments of the public sector labor-management community during the past year. Overall demand for the Board's services increased compared with the previous year. The pervasive concern in the reporting period continued to be the impact of the national economic recession on public finance. Scarce public resources made reaching agreement more difficult resulting in: increased demand for mediation, a lower settlement rate in mediation, increased demand for fact-finding, and continued changes in bargaining agents.

Members of the Board are appointed by the Governor, confirmed by the Legislature, and

serve four-year terms. Employer Representative Karl Dornish, Jr., of Winslow, Alternate Employer Representatives Patricia Dunn of Scarborough and Richard Hornbeck of Bowdoinham, and Alternate Employee Representatives Wayne W. Whitney of Brunswick and Robert L. Piccone of Portland continued to serve in their respective capacities throughout the year. The terms of office of the Public Chairs expired this year. Governor LePage appointed Katherine I. Rand of Portland as primary Public Chair, and Peter T. Dawson of Hallowell and Susan L. Higgins of Kennebunk as Alternate Public Chairs.

The appointments were confirmed by the Legislature. On May 9, 2012, primary Employee Representative Carol B. Gilmore of Charleston passed away. Carol's wit and wisdom will be missed by her colleagues on the Board, the Board staff, and members of the public sector labor-management community who appeared before the Board during Carol's many years of service. The position of Primary Employee Representative is vacant at this time.

As in past years, the staff of the Board handled a great many inquiries from public employers and employees or their representatives, the media, and members of the public. The staff is the primary source of information for persons interested in the operations and procedures of Maine's public sector labor laws. In instances that involved matters over which the Board has no jurisdiction, the staff continued the policy of providing some orientation for the inquirer, suggesting other agencies or organizations that might be of help.

The Board's web site is the prime source for research of Board precedent, as the scope of collective bargaining issues addressed by Maine courts is quite limited and difficult to research on-line. The search engine used by the Board's web site draws on an extensive database of the Board's prohibited practice and representation appeals decisions, as well as Superior and Supreme Judicial Court opinions reviewing the Board's decisions. Access to this case law helps public employers, employees and bargaining agents to know the parameters of required or permitted conduct and to use such information to avoid violating the law. The web site also includes links

to the statutes administered by the Board, the complete text of the Board's Rules and Procedures, the Board's forms, a bulletin board of current activities, and links to other state and federal labor relations agency sites. Since its inception the web site has been maintained and updated by Board staff. Over the years, the web site has been highly praised by the labor-management community.

### Legislative Matters

Two bills impacting the Board's jurisdiction were carried over for consideration into this year's Legislative Session. One bill, L.D. 309, concerned the policy question of whether employees, who are represented by a bargaining agent but who choose not to become members of the union, may be required to pay a service fee for their share of the union's cost of representing the bargaining unit. As drafted, L.D. 309 would have resulted in several unintended consequences; therefore, the primary sponsor presented an amendment at the public hearing last session that would have replaced the bill, avoiding the problematic impact. The Legislature did not consider the bill prior to adjournment.

A second bill, L.D. 1207, repealed the Agricultural Employees Labor Relations Act, 26 MRSA c. 16, which was administered by the Board. Despite its title, the Act only covered egg processing facilities that have over 500,000 laying birds and employ more than 100 agricultural employees. Since its enactment in 1997, the Board received only one complaint under the Act, which was withdrawn in 1998 prior to hearing before the Board. The bill was enacted and became law. Chap. 565, P.L. 2011.

### Bargaining Unit and Election Matters

During fiscal year 2012, the Board received 21 voluntary agreements or joint filings for the establishment of or change in collective bargaining units. There were 36 of these filings in FY 11. Of the 21 FY 12 filings, 12 were for K-12 educational units, 8 were for municipal or

county government units, and 1 was for a state unit. The unit agreements were filed by the following employee organizations:

<u>Maine Education Association/NEA</u>	8 agreements
(Otis Beech Hill School Teachers Unit)	
(RSU 1 Teacher/Certified Professional Unit)	
(RSU 10 Buckfield Cafeteria Workers Unit)	
(RSU 20 Educational Support Personnel Unit)	
(RSU 23 Non-Instructional Support Staff Unit)	
(RSU 24 Food Service Unit)	
(RSU 73 Administrative Unit)	
(RSU 73 Professional Staff Unit)	
<u>Maine State Employees Association</u>	6
(City of Auburn Administrative Employees Unit)	
(MePERS Administrative Services Unit)(2)	
(MePERS Pro-Tech Services Unit)	
(MePERS Supervisory Services Unit)	
(State of Maine Supervisory Services Unit)	
<u>AFSCME Council 93</u>	3
(RSU 10 Nutrition Service Workers Unit)	
(RSU 24 Admin. Assistants & School Secretaries Unit)	
(Waterville Schools Maint. Custodian, & Cafeteria Unit)	
<u>Fraternal Order of Police</u>	2
(Franklin County Deputies Unit)	
(Madison Police Department Unit)	
<u>MSAD #60 Administrative Team</u>	1
(RSU 60 Administrative Unit)	
<u>Teamsters Union Local 340</u>	1
(Boothbay Harbor Public Works Unit)	

Of the 21 filings, 2 were for new units and, 19 were for changes to existing units, including 10 that involved RSU bargaining units.

Ten (10) unit determination or clarification petitions (submitted when there is no agreement on the composition of the bargaining unit) were filed in FY 12. Agreements were

reached in 4 cases, 1 unit was deemed appropriate, 3 went to hearing (2 decisions issued and 1 decision pending), and 2 cases are pending. Four (4) unit petitions were carried forward from FY 11; 2 were settled by agreements (1 at hearing), a decision was issued in 1 case, and the fourth petition was withdrawn. Once a unit petition and response are filed, a member of the Board's staff, other than the assigned hearing officer in the case, contacts the parties and attempts to facilitate agreement on the appropriate bargaining unit. This involvement, successful in 50% of the cases this year, saves substantial time and litigation costs for public employers and bargaining agents. There were 16 unit petitions filed in FY 11. The unit determination/clarification requests were filed by the following employee organizations:

<u>AFSCME Council 93</u>	3 petitions
(Penobscot County S. D. Corrections Div. Line Unit)	
(Portland Housing Authority Maintenance Unit)	
(RSU 24 Central Office Staff Unit)	
<u>American Federation of Teachers</u>	1
(Sanford Central Office Staff Unit)	
<u>Fraternal Order of Police</u>	1
(Newport Law Enforcement Unit)	
<u>Individuals</u>	1
(York County Corporals, Sgts., & Lts. Unit)	
<u>International Association of Machinists</u>	1
(Madison Highway Dept. Employees Unit)	
<u>Maine Association of Police</u>	1
(Freeport Police Department Unit)	
<u>Maine Education Association/NEA</u>	1
(MSAD 60 Administrative Unit)	
<u>Teamsters Union Local 340</u>	1
(Norway Public Works Dept. Unit)	

After the scope and composition of the bargaining unit is established, either by agreement or by unit determination, a secret ballot bargaining agent election is conducted by the Board. An election is held to determine the desires of the employees, unless a bargaining agent is voluntarily

recognized by the public employer. During FY 12 there were 7 voluntary recognitions filed, involving the following employee organizations:

<u>Maine Education Association/NEA</u>	5 voluntary recs.
(Otis Beech Hill School Teachers Unit)	
(RSU 1 Teacher/Certified Professional Unit)	
(RSU 20 Educational Support Personnel Unit)	
(RSU 23 Non-Instructional Support Staff Unit)	
(RSU 73 Professional Staff Unit)	
<u>Fraternal Order of Police</u>	2
(Franklin County Deputies Unit)	
(Madison Police Department Unit)	

Eight (8) bargaining agent election requests were filed in FY 12; 6 elections were held, including matters carried forward from FY 11. The employee organizations were certified as the bargaining agent in 5 cases, and the employees opted for no representative in 1 case. There were no voluntary recognitions as a result of the petitions, and 6 election matters are pending. The bargaining agent election petitions filed this year involved the following employee organizations:

<u>AFSCME Council 93</u>	2 petitions
(RSU 24 Central Office Staff Unit)	
(Waldo County Support Staff Unit)	
<u>American Federation of Teachers</u>	1
(Sanford Central Office Staff Unit)	
<u>Fraternal Order of Police</u>	1
(Newport Law Enforcement Unit)	
<u>International Association of Machinists</u>	1
(Madison Highway Department Employees Unit)	
<u>Maine Education Association/NEA</u>	1
(RSU 24 Ed Techs & Food Service Employees Unit)	
<u>MSAD 60 Administrative Team</u>	1
(Administrators/Dept. Directors Unit)	
<u>Teamsters Union Local 340</u>	1
(Norway Public Works Department Unit)	

In FY 11, there were 21 voluntary recognitions filed, 11 bargaining agent election requests received, and 6 elections held.

The most significant development regarding representation matters this year was the continued number of requests for decertification/certification and straight decertification elections. The former type of petition involves a challenge by the petitioning organization to unseat and replace an incumbent as bargaining agent for bargaining unit members. In decertification petitions, no new union is involved; the petitioner is simply attempting to remove the incumbent agent. The Board received 14 decertification/ bargaining agent election requests this year, compared with 19 in FY 11 and an average of 4.25 such requests per year during the preceding 4 years. In addition, the Board received 6 straight decertification election requests this year, compared with 4 in FY 11 and only a single such request during the preceding 4 years. While the expressed rationale for these filings varies, the overriding reason appears to be unit employee dissatisfaction with the modest wage and benefit changes negotiated by the incumbent bargaining agents during this difficult period and the belief that a new bargaining agent will be able to negotiate better results. Twelve (12) elections were held. The results of the decertification/certification petitions were as follows:

<u>Petitioner (Bargaining Unit)</u>	<u>Incumbent Agent</u>	<u>Outcome</u>
American Federation of Teachers (Jefferson Support Staff Unit)	Jefferson Support Staff Assn./MEA/NEA	10-0-4 for Jeff. SSA/MEA/NEA
Fraternal Order of Police (Brewer Police Command Unit)	Me. Assn. of Police	4-0 for FOP
Fraternal Order of Police (Brewer Police Officers Unit)	Me. Assn. of Police	9-0 for FOP
Fraternal Order of Police	AFSCME Council 93	19-0 for FOP



(Lincoln County Sheriff's  
Dept. Unit)

Fraternal Order of Police  
(Sagadahoc County Sheriff's  
Dept. Unit)

AFSCME Council 93 12-1 for FOP

Fraternal Order of Police  
(Somerset County Law  
Enforcement Unit)

Teamsters Local 340 11-0 for FOP

Maine Association of Police  
(Hampden Police Unit)

AFSCME Council 93 5-0 for MAP

Maine Marine Association  
(Casco Bay Island Transit  
District Captains and  
Deckhands Unit)

Local 333, UMD, ILA 20-0 for MMA

Maine Marine Association  
(Casco Bay Island Transit  
District Shoreside Employees Unit)

Local 333, UMD, ILA 6-2 for MMA

Nat. Correctional Employees  
Union (Knox County Sheriff's  
Dept. Unit)

AFSCME Council 93 18-5 for NCEU

Nat. Correctional Employees  
Union (Somerset County Sheriff's  
Dept. Corrections Unit)

Teamsters Local 340 35-8 for Teamsters

RSU #73 Education Assn./  
MEA/NEA (Jay Secretaries  
Unit)

Jay Secretaries and  
Library Clerks Assn.

4-0 for MEA/NEA

As noted above, the Board received 6 straight decertification petitions in FY 12. Four

elections were held and 2 petitions were withdrawn. The results of the decertification petitions were as follows:

<u>Bargaining Unit</u>	<u>Incumbent Agent</u>	<u>Outcome</u>
Bangor Airport Ramp Attendants Unit	AFSCME Council 93	Pending
Old Town Public Works Unit	Teamsters Local 340	13-1 for No Rep.
RSU 21 Bus Drivers, Bus Aides & Mechanics Unit	Teamsters Local 340	Pending
South Portland City Bus Drivers Unit	AFSCME Council 93	6-4 for AFSCME

Seven disclaimers of interest were filed and granted. Disclaimers arise when a bargaining agent no longer wishes to represent a bargaining unit. In such cases, the bargaining agent files a request to disclaim interest with the agency, which gives notice of such intent to the employees in the unit at issue and provides them with an opportunity to object to the request. If no employee objects, there is no collective bargaining agreement in effect, and the bargaining agent has no outstanding financial obligations for bargaining or contract administration activities regarding the unit, the disclaimer will be granted. The employee organization is no longer the bargaining agent and is prohibited from seeking to represent the employees in the disclaimed bargaining unit for a one-year period from the granting of the disclaimer request.

There were 8 election matters carried over from FY 11; consequently, there were 36 such matters requiring attention during the fiscal year. This compares with a total of 35 in FY 11.

The K-12 school reorganization law, 20-A M.R.S.A. § 1464(2)(H) provides that, for Regional School Units where "bargaining units with different bargaining agents must be merged

into a single regional school unit-wide bargaining unit," such mergers and subsequent resolution of conflicts concerning representation are resolved by the Board pursuant to petitions to be filed "not more than 90 days prior to the first August 31st occurring after the 3rd anniversary date of the operational date of the regional school unit." For those regional school units whose operational date was July 1, 2009, the statutory period for the filing of unit merger petitions opened on June 4, 2012. To date, 5 petitions for merger pursuant to this law have been filed with the Board.

<u>Teamsters Union Local 340</u>	3 petitions
(RSU #13 Bus Driving Employees Unit)	
(RSU #13 Custodians & Maintenance Employees Unit)	
(RSU #13 Cafeteria Employees Unit)	
<u>Maine Education Association/NEA</u>	2
(RSU #12 Certified Professionals Unit)	
(RSU #12 Support Staff Unit)	

### Dispute Resolution

The Panel of Mediators is the cornerstone of the dispute resolution process for public sector negotiations. Its importance continues to be reflected in its volume of activity and in its credibility with the client community. The activities of the State mediators are summarized in this report and are more fully discussed in the Annual Report of the Panel of Mediators.

Interest mediation is the process through which individual State mediators assist parties in negotiating initial or successor collective bargaining agreements. The number of new interest mediation requests received during the fiscal year increased significantly. There were 69 new requests filed this year compared with 54 last year. In addition to the new mediation requests received during FY 12, there were 37 matters carried over from FY 11 that required mediation

activity during the year. Thus, the total number of mediation matters requiring the Panel's attention in this fiscal year was 106, up from 90 in FY 11.

The higher level of new mediation requests this year resulted from more agreements expiring this year than in the previous year. As noted in last year's report, a common strategy early on in the economic downturn was the agreement to one-year contract extensions in the hope that conditions would be more favorable in a year. Two years ago, faced with continued uncertainty in the national economy and scarce resources, parties returned to the practice of negotiating multi-year agreements to provide predictability in the terms and conditions of employment, resulting in more agreements expiring this year.

Overall, the demand for public sector mediation services increased by 27.8% this year. Requests in the municipal sector, including counties and utility districts increased by 30%; those arising from K-12 education increased by only 9.1%. Anecdotal evidence from the mediators indicates that several school employers and bargaining agents delayed beginning negotiations this year due to uncertainties regarding the amount each district would be receiving in State general purpose aid to education, resulting in fewer bargaining cases becoming ripe for mediation until late in the fiscal year. The reduction in the number of bargaining units, due to the K-12 reorganization initiatives, may also have contributed to the smaller increase of mediation requests in that sector.

The settlement rate for cases where mediation was concluded this year, including carryovers from FY 11, decreased significantly. This year's settlement rate was 63.8%. During the past 15 years, the settlement rate has ranged from this year's low to a high of 88.5% in FY 2005, with a mean of 79.9%. Fiscal issues, particularly health insurance financing and general wage adjustments, continued to be difficult issues to resolve this year. In the municipal sector,

modest general wage increases were negotiated this year and some agreements included high-deductible health insurance plans, supplemented by health reimbursement accounts. In the K-12 sector, the thorniest issues involved negotiations aimed at harmonizing terms and conditions of employment for the new regional school unit-wide bargaining units, starting from the disparate provisions of the collective bargaining agreements that applied to the constituent school administrative units.

Fact-finding is the second step in the three step statutory dispute resolution process. In Fiscal Year 2012, 23 fact finding requests were filed. There were 12 requests received in FY 11. Of the 23 cases, plus 5 carried forward from FY 11, 15 requests went to hearing and decisions were issued. Three (3) petitions were withdrawn or otherwise settled, and 10 are pending. In FY 11, 8 fact-finding hearings were held. The following employee organizations were involved in requests for fact finding services this year:

<u>Teamsters Union Local 340</u>	6 requests
(Calais EMS Unit)	
(Jay Transfer Station Unit)	
(Jay Wastewater Unit)	
(South Berwick Professional Unit)	
(South Berwick Public Works Unit)	
(Waterboro Employees Unit)	
<u>Maine Education Association</u>	5
(Auburn School Dept. Food Services Unit)	
(MSAD 6 Teachers Unit)	
(MSAD 61 Teachers Unit)	
(University of Maine System Faculty Unit)	
(University of Maine System Professional & Admin. Staff Unit)	
<u>AFSCME Council 93</u>	4
(Oxford County Dispatch Unit)	
(Oxford County Supervisor Unit)	
(Penobscot County S. D. Corrections Division Line Unit)	
(South Portland City Bus Drivers Unit)	

<u>Maine State Employees Association</u>	3
(Administrative Unit of Legislative Employees)	
(Governor Baxter School Professional and Supervisory Unit)	
(Governor Baxter School Support Services Unit)	
<u>International Association of Fire Fighters</u>	2
(Augusta Battalion Chiefs Unit)	
(Augusta Firefighters Unit)	
<u>County Patrol Association</u>	1
(York County Patrol Deputies Unit)	
<u>Maine Association of Police</u>	1
(Wells Police/Dispatcher Unit)	
<u>Portland Police Superior Officers Benevolent Association</u>	1
(Portland Police Sergeants, Lieutenants & Captains Unit)	

Interest arbitration is the third and final step in the statutory dispute resolution process. Under various public employee statutes administered by the Board and unless agreed otherwise by the parties, an interest arbitration award is binding on the parties on non monetary issues. Unresolved questions concerning salaries, pensions and insurance are subject to interest arbitration, but an award on these matters is only advisory. The Municipal Public Employees Labor Relations Law, which applies to the overwhelming majority of bargaining situations, does not require parties to notify the Board when they are invoking mandatory interest arbitration. The law does require that arbitration awards be filed with the Board; however, they usually are not. This year, two matters were scheduled to go to interest arbitration at the time this report was prepared; no interest arbitration decisions have been received.

#### Prohibited Practice Complaints

One of the Board's main responsibilities in administering the public sector collective bargaining process is to hear and rule on prohibited practice complaints. Formal hearings are conducted by the full, three-person Board in such matters. Twenty-four (24) complaints were filed in FY 12. This represents an increase over the FY 11 level. For the last six years, including

the current year, the number of complaints filed each year has fluctuated from a low of 5 to a high of 24, with the mean being 16. Many of the complaints received during the past year charged violations of the duty to negotiate in good faith.

In addition to the 24 complaints filed in FY 12, there were 15 carryovers from FY 11, compared with 18 complaints and 11 carryovers last year. Board panels conducted 2 evidentiary hearings on 3 cases during the year, compared with 1 in FY 11. In cases where there are no material facts in dispute, the parties submit their controversy to the Board through a stipulated record and written arguments. The Board issued 6 formal Orders in 4 cases. Board chairs, sitting as prehearing officers, held conferences in 8 cases, compared with 6 in FY 11. Seven (7) cases are being held in abeyance. Fourteen (14) complaints were dismissed or withdrawn at the request of the parties, including two after hearing, and 4 were dismissed by the executive director. One (1) case was deferred to arbitration after prehearing conference. Twelve (12) complaints await prehearing and/or hearing.

The Board issued 6 formal decisions in prohibited practice cases this year. Two of the decisions issued by the Board consider the question of whether statements made outside of the bargaining process by one of the parties in negotiations violated the statutory duty to negotiate in good faith. Both cases involved written negotiating ground rules. In *Town of Orono v. IAFF Local 3106, Orono Fire Fighters*, No. 11-11 (August 11, 2011), the ground rule provided that "no press releases regarding negotiations shall be made by either party until after negotiations have concluded." The parties agreed that, except for the charged violation of the ground rule, the respondent had fully complied with the duty to bargain. The issue was the union president's e-mail to the local newspaper suggesting an article on the negotiations and specifying the positions of the parties on the three issues going to fact-finding. Although violation of a negotiating ground rule is not a *per se* violation of the duty to bargain, the Board found a

violation because of the very specific terms of the ground rule and the fact that the e-mail was initiated and sent by the union president with the clear intent to disrupt the bargaining process and to use the press to bring public pressure on the employer to alter its bargaining position.

In another case, *Massabesic Education Association/MEA/NEA v. RSU 57 Board of Directors*, No. 11-17 (November 10, 2011), the parties' ground rule stated, in full: "All meetings shall be held in closed session and are strictly confidential." The first and most problematic statement charged was comment by the Superintendent in his written Budget Message to the effect that if the employees were not committed to "sharing the sacrifice" by "foregoing pay increases," layoffs would occur. The Board noted that the school budget process law, 20-A M.R.S.A. § 1482-B, requires the Superintendent to thoroughly explain the proposed budget, including disclosure of the assumptions upon which it was based. One of the assumptions was flat funding for employee salaries. Given the general terms of the ground rule allegedly violated and the fact that the record did not disclose the content of any negotiating session, the Board held that the charged statement did not violate the Act. The Board went on to note that "in the shaky economy and the shrinking state budget," the charged comment was merely a "reference to choosing the lesser of two evils . . . a wage freeze or layoffs." While not condoning the charged comments, the Board held that they, together with a separate technical violation of the ground rule, did not rise to the level of constituting violation of the duty to negotiate in good faith and dismissed the complaint.

Three of the Board's decisions arose out of negotiations between the City of Augusta and the bargaining agent representing the City's fire fighters. In *IAFF Local 1650, Augusta Fire Fighters v. City of Augusta*, No. 11-03 (December 15, 2011), the Union charged that the City had violated the statutory duty to bargain in good faith by failing to honor a negotiating ground rule that provided, if the current collective bargaining agreement expired before a successor



agreement was reached, "the parties . . . agree that said agreement will remain in full force and effect until a successor agreement has been negotiated." The City admitted that its negotiator signed the ground rule but argued that he did not possess the authority to bind the City to an extension of the agreement and that the Union was notified as soon as the City learned of the error. The Board noted that ground rules are not mandatory subjects of bargaining and are intended to govern the mechanics of negotiations. Violation of ground rules is evidence of violation of the duty to bargain, to be considered in the totality of the circumstances. Since negotiators only need authority to reach final tentative agreement to be bargaining in good faith, the ground rules themselves provided that the principal parties retained the authority to ratify final tentative agreements, ratification by the principal parties is the norm in public sector negotiations in Maine, and the establishment of substantive terms and conditions of employment is not an appropriate use of ground rules, the Board concluded that the "evergreen" clause at issue was not enforceable as a matter of law and dismissed the complaint.

After presenting their evidence in the prohibited practice case, the parties presented argument whether the Board should allow additional testimony on the City's alleged failure to maintain the level of benefits provided in the expired contract. In an Interim Order dated August 9, 2011, the Board concluded that testimony concerning the alleged unilateral changes was not within the scope of the complaint and would not be received. The Board also addressed 26 M.R.S.A. § 964-A(2), which continues a collective bargaining agreement's grievance arbitration provision post-expiration and requires the Board to determine which provisions of the agreement are subject to such post-expiration arbitration.

In its Status Quo Determination, 11-03SQ (December 15, 2011), the Board held that contract articles regarding annual payment of unused sick leave and unused clothing allowances, and a provision controlling employer contribution to retiree health insurance, are all part of the

status quo that is enforceable under the terms of § 964-A(2). The first two provisions are part of the compensation package for current employees and the third provision is a future benefit for active employees. In a subsequent procedural decision issued January 5, 2012, the Board agreed with the City's position that any arbitration pursuant to § 964-A(2) be stayed, pending the outcome of the City's appeal of the Board's Status Quo Determination before the Superior Court.

This year, the Board handled its first case under the Judicial Employees Labor Relations Act, 26 M.R.S.A. § 1281, et seq., since that Law was enacted in 1983. Presumably because of Constitutional separation of powers considerations, this law is unique in providing that, if a complaint filed with the executive director could constitute violation of the law, the director must conduct an investigation consisting of review of "sworn affidavits from persons having knowledge of the facts" and, "[i]f it is determined that the sworn facts do not, as a matter of law, constitute a violation, the charge shall be dismissed by the executive director, subject to review by the board." § 1289(2). In *Aline C. Dupont v. Maine State Employees Association/SEIU Local 1989*, No. 11-05 (March 27, 2012), the executive director found that the complaint stated a claim against the Union for violation of its statutory duty of fair representation in its decision not to invoke grievance arbitration regarding termination of the Complainant's employment with the Judicial Branch. The evidence in the ensuing investigation did not establish a violation of the Act and the Complainant appealed the dismissal of the complaint to the Board. Rather than limiting its review to the executive director's decision, the Board examined all of the relevant evidence in the record and reached its own decision regarding the merits of the Complainant's case, affirming dismissal of the complaint.

The executive director has continued to be actively involved settling prohibited practice cases through telephone conferences and personal meetings with the parties' representatives. The services of the executive director or a Board attorney are offered on the day of the hearing to

attempt to settle cases. If the parties either decline the Board's offer or if the effort is unsuccessful, the Board members are present, ready to convene a formal evidentiary hearing.

Prohibited practice complaints, with the respondent noted in parenthesis, were filed by the following this year:

<u>AFSCME Council 93</u>	4 complaints
(Lisbon)	
(Portland - 2)	
(Waldoboro)	
<u>Individuals</u>	4
MSAD #61	
MSEA	
State of Maine & MSEA	
University of Maine	
<u>MSEA</u>	4
(Maine Turnpike Authority	
(State of Maine - 3)	
<u>Fraternal Order of Police</u>	3
(Penobscot County S.D. - 2)	
(Washington County)	
<u>International Assn. of Firefighters</u>	2
(South Portland - 2)	
<u>Teamsters Union Local 340</u>	2
(MSAD #46 Dexter)	
(Town of Mt. Desert)	
<u>Androscoggin County. Employees Assn.</u>	1
(Androscoggin County)	
<u>County Patrol Assn.</u>	1
(York County)	
<u>IAMAW</u>	1
(Wiscasset)	
<u>Maine Education Association</u>	1
(RSU #67 & Supt. Hamlin)	
<u>MSAD #6 Board</u>	1
(Saco Valley Teachers Assn.)	

## Unit Appeals

The Board has the statutory authority to decide appeals of unit-related decisions issued by the Executive Director, such as unit determination, unit clarification, and election issues. This year, the Board received a unit appeal, challenging the Executive Director's determination that a separate unit of school department central office employees was appropriate for purposes of collective bargaining. *Sanford School Committee and Central Office Staff EA/MEA/NEA*, Nos. 12-UDA-01 & 12-UCA-01 (May 24, 2012). On appeal, the Employer argued that three of the employees included in the new unit were confidential and should have been excluded, that the unit as a whole was not appropriate, and the remaining positions should have been placed in an existing school secretarial unit. The Board affirmed the determination that the central office unit was appropriate; however, the Board held that the Hearing Officer made an error of law, concluding that knowledge of the scope of the employer's bargaining authority did not warrant exclusionary designation, within the meaning of 26 M.R.S.A. § 962(6)(C), for two of the employees involved. In addition, the Board found that a third employee lacked the requisite community of interest with those in the central office unit, but rather shared a community of interest with the employees in the school secretarial unit and was assigned to that unit by the Board.

## Interpretive Rulings

The labor relations statutes authorize the Board to issue non-binding interpretive rulings to assist parties in understanding the provisions of the law and, thereby, avoiding violating the statutes. No requests for interpretive rulings were received this year and the Board did not issue any on its own initiative.

## Appeals

The Complainant in *Aline C. Dupont v. Maine State Employees Association/SEIU Local 1989*, No. 11-05, appealed dismissal of the complaint in the Superior Court, and the City appealed the Board's Status Quo Determination in *IAFF Local 1650, Augusta Fire Fighters v. City of Augusta*, No. 11-03. Both appeals are pending before the Superior Court.

### Summary

The following chart summarizes the filings for this fiscal year, along with the previous five years and percent change from year to year:

	FY 2007	FY 2008	FY 2009	FY 2010	FY 2011	FY 2012
Unit Determination/ Clarification Requests Number filed–	32	-78%	+85%	-7.7%	+33%	-37.5%
Agreements on Bargaining Unit (MLRB Form #1) Number filed–	16	+50%	-40%	+106.7%	+16%	-41.7%
Voluntary Recognitions (MLRB Form #3) Number filed–	2	-50%	+100%	+550%	+61.5%	-46%
Bargaining Agent Election Requests Number filed–	31	+64.5%	+15.4	-15.4%	0%	-37.5%
Decertification Election Requests Number filed–	0	+100%	-100%	0%	400%	+50%
Decert./Certification Election Requests Number filed–	4	+25%	-20%	0%	37.5%	-26%
Mediation Requests Number filed--	47	-14.9%	-25%	+64%	-15.6%	+27.8%
Fact-Finding Requests Number filed–	12	-66.6%	+111%	+55.6%	-14.3%	+91.7%

Prohibited Practice Complaints Number filed–	18	-72.3%	+200%	-6.2%	+17%	+33.3%
		5	16	15	18	24

The above table indicates that the demand for the Board's different services generally increased during the fiscal year, reflecting the severe economic downturn. The agency's leading business indicator, the level of demand for interest mediation, reflects the difficulty in concluding agreements in the current economic climate as well as the increased complexity of negotiation implementing K-12 reorganizations. For the past several years we have been predicting that public sector organizational activity may be nearing the point of saturation, given that the Board has been in existence since 1969 and many units, particularly education and firefighter units, predated the establishment of the agency. As the number of organized employees approaches the universe of those eligible, the number of new units created each year will decline. As predicted last year, there was a decrease in organizational activity for new bargaining units this year.

During FY 12, public sector labor-management relations in Maine continued to mature, with parties relying on the statutory dispute processes to settle their differences. The development of more mature labor relations is evidenced by the strong demand for mediation services and the continued willingness by the parties to settle prohibited practice complaint cases. In sum, the Board's dispute resolution services fostered public sector labor peace during this very difficult and challenging year.

Dated at Augusta, Maine, this 29th day of June 2012.

Respectfully submitted,

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Marc P.

Ayotte  
Executive Director  
Maine Labor Relations Board